

## REMARKS

Claims 1-20 are currently pending in the present application and are under final rejection. Claims 1-4, 6-10, 12-15 and 17-20 have been rejected based upon the combination of Gross and Levin. Claims 5, 11 and 16 are rejected based upon Gross and Levin and further in view of Seagraves.

A fundamental difference exists between the art of record and the claimed invention. All of the independent claims require transmitting information *for initializing* the communication link using said sub-channels. Thus the claimed invention uses the highest anticipated performance sub-channels to transmit initialization information, i.e. before showtime, thus achieving a faster initialization between the ATU-C and ATU-R before showtime.

The Levin patent does not adjust the data rate (or modulation scheme) during initialization. Rather it exchanges additional information between the two ends during initialization in order to improve the determination of downstream rate options for Showtime by the central office. Showtime is the the 'data transmit' phase (step 32 of Fig.2 of Levin). That approach applies only to selecting the rate for use in Showtime. In fact, the exchange of 'rate options' is not even used in the latest (ADSL2) standard that the claims are directed to.

Likewise, as noted in the final office action Gross fails to disclose the identification of sub-channels for high performance communication and the reference of Seagraves likewise does not supply the deficiencies of Levin and Gross.

Applicants have made a diligent and bona fide effort to answer each and every ground for rejection or objection to the specification including the claims and to place the application in condition for allowance. Reconsideration and further examination is respectfully requested,

and for the foregoing reasons, Applicant respectfully submits that this application is in condition to be passed to issue and such action is earnestly solicited.

It is believed that no additional fees are presently due. However, should that determination be incorrect, the undersigned hereby authorizes the Patent Office officials to debit Deposit Account No. 50-0562 to satisfy any and all fees which may be due.

Should the Examiner wish to discuss this matter further, please contact the undersigned at the below listed number.

Dated: March 23, 2006

Respectfully submitted,

Merek, Blackmon & Voorhees, LLC  
673 S. Washington St.  
Alexandria, Virginia 22314  
Tel. 703-684-5633  
Fax. 703-684-5637



---

David H. Voorhees  
Reg. No. 33,325  
Attorney for Applicant